IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1637 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 - No

KANTILAL NARAN JESANI

Versus

PRABHAT SOLVANT EXTRACTION INDUSTRIES PVT. LTD.

Appearance:

MR JD AJMERA for Petitioners

MR KS NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 21/07/1999

ORAL JUDGEMENT

Earlier the matter was dismissed and thereafter was restored by this Court's order dated 14.8.1997.

2. The matter has again been listed for final hearing before this Bench. Inspite of three opportunities given, Mr. Ajmera, learned counsel for the petitioners states that he has no instructions in the matter atleast in so far as the developments which might have taken place after admission of the petition in the

year 1980. Hence, the Court has proceeded to decide the matter after considering the judgment of the Labour Court.

3. The petitioners were employees of Prabhat Solvent Extraction Industries Pvt. Ltd. at Manavadar. The management initiated departmental proceedings against the petitioners and removed them from service. The petitioners raised an industrial dispute through their Union Junagadh Jilla Kamdar Union. The dispute was referred to the Labour Court. After considering the oral and documentary evidence on record, the Labour Court rejected the reference on the ground that the management had held the departmental inquiry after giving the workmen an opportunity of being heard. However, the workmen did not participate in the inquiry and, therefore, there was no breach of the principles of natural justice. The allegation of the workmen that their removal from service was by way of victimization was not believed by the Labour Court. The charge against the workmen that they had refused to carry out the instructions of the management was held to have been proved. The Labour Court found no ground to interfere with the impugned orders of removal. It is against the aforesaid award of the Labour Court rejecting the reference that the petitioners-workmen themselves have filed the present petition.

4. This Court has perused the grounds urged in the memo of the petition. It is true that the inquiry proceeded with great promptness which would ordinarily not be found in the departmental inquiry in a public sector undertaking or in Government service, but that would not mean that the workmen did not get a reasonable opportunity of being heard. The finding of the Labour Court that inspite of the opportunity given to the workmen, they did not remain present is a finding of fact which cannot be interfered with in this petition under Article 227 of the Constitution. The other contentions raised in the petition all raise disputed questions of fact which have already been gone into by the Labour Court. Hence, this Court would not reappreciate the evidence or sit in appeal over the judgment of the Labour Court.

5. As regards the contention that punishment is shockingly disproportionate to the charge proved against the workmen, it appears from the judgement of the Labour Court that the petitioners had refused to carry out the instructions of the management for doing the particular work. The refusal to carry out the instructions was on

the ground that the particular work of pouring water once a day did not fall with the the scope of their duties. It also appears that thereafter there was a strike of the workers and ultimately there was a settlement between the workmen and the management as far back as on 30.10.1980. However, there was no settlement in respect of the claim of the present four petitioners for reinstatement with full backwages.

6. Once the Labour Court disbelieved the case of the petitioners that their removal form service was by way of victimization and the Labour Court also found that the workmen refused to carry out the instructions given to them for filling water in the concerned area on the ground that it did not fall with the scope of their duties, it cannot be said that the punishment of removal from duty was excessive or disproportionate. It does not appear from the judgment of the Labour Court that either at the hearing before the management or at the hearing before the Labour Court the workmen agreed that they were ready and willing to do the particular work which was assigned to them earlier and which was refused by them earlier. This subsequent conduct on the part of the workmen also would disentitle them from any sympathetic consideration on the ground of alleged disproportionality of the punishment.

7. In view of the above discussion, the petition deserves to be dismissed and is accordingly dismissed.

Rule is discharged with no order as to costs.

Sd/-
July 21, 1999 (M.S. Shah, J.)
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